

HOUSE BILL NO. 22

INTRODUCED BY M. LINDEEN

BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT AN EASEMENT IS THE PREFERRED INTEREST TO BE TAKEN IN A CONDEMNATION PROCEEDING UNLESS THE PARTIES AGREE THAT A GREATER INTEREST SHOULD BE TAKEN OR THE CONDEMNOR SHOWS BY A PREPONDERANCE OF THE EVIDENCE THAT TAKING A GREATER INTEREST IS NECESSARY; PROVIDING AN EXEMPTION FOR STATE HIGHWAY PURPOSES; AND AMENDING SECTIONS 60-4-102, 70-30-104, AND 70-30-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 60-4-102, MCA, is amended to read:

"60-4-102. General power of department to acquire interests in property. Notwithstanding any other provision of law, the department of transportation may acquire by purchase or other lawful manner lands or other real property, excluding oil, gas, and mineral rights, ~~which~~ that it considers reasonably necessary for present or future highway purposes. The department may acquire a fee simple or lesser estate or interest. The provisions of 70-30-104(2) do not apply to the acquisition of a fee simple interest under this section."

Section 2. Section 70-30-104, MCA, is amended to read:

"70-30-104. What estates and rights in land may be taken. (1) The following is a classification of the estates and rights in ~~lands~~ land subject to ~~be taken~~ taking for the public use:

~~(1)(a) such estate subject to subsection (2), estates or rights as may be~~ that are necessary, up to and including a fee simple interest, when taken for:

(i) public buildings or grounds; ~~or for~~

(ii) permanent buildings; ~~or for~~

(iii) an outlet for a flow or a place for the deposit of debris or tailings of a mine; ~~or for~~

(iv) the mining and extracting of ores, metals, or minerals when the ~~same~~ ores, metals, or minerals

1 are owned by the ~~plaintiff~~ condemnor but are located beneath or upon the surface of property ~~where~~ for
 2 which the title to ~~said~~ the surface vests in others; or

3 (v) ~~for~~ the underground storage of natural gas by a natural gas public utility as defined in
 4 82-10-301. When the ~~appropriation~~ taking is for the underground storage of natural gas, all of the right,
 5 title, interest, and estate in the real property and in the subsand stratum, formation, or reservoir ~~so~~
 6 ~~appropriated~~ shall taken must be determinable and for all purposes ~~terminate~~ terminates upon abandonment
 7 or upon cessation for the period of 1 year of the use for which the ~~same property~~ was appropriated, taken,
 8 ~~and thereupon~~ Upon the abandonment or cessation, the ownership of the residue of natural gas ~~therein~~
 9 remaining ~~shall likewise vest~~ in the reservoir vests in the ~~then~~ current owners of ~~such~~ the surface property
 10 over the reservoir space.

11 (2)(b) ~~such~~ the estate or rights in the surface ~~as property that~~ are necessary for a reservoir or dam
 12 and for the permanent flooding that results from the reservoir or dam, up to the edge of the maximum pool
 13 of the reservoir;

14 (3)(c) ~~an~~ an easement, leasehold, or other interest, for ~~so~~ as long as the interest is necessary for the
 15 purpose described in the complaint, or fee simple interest when taken for any other use;

16 (4)(d) ~~the~~ the right of entry upon and occupation of land and the right to take ~~therefrom~~ such from
 17 the land any earth, gravel, stones, trees, and timber ~~as that~~ may be necessary for some public use.

18 (2) Subject to 60-4-102, an easement is presumed to be sufficient for a project for a public use
 19 unless the parties agree that a greater interest should be taken or the condemnor shows by a
 20 preponderance of the evidence that a greater interest is necessary."

21

22 **Section 3.** Section 70-30-206, MCA, is amended to read:

23 **"70-30-206. Powers of court -- preliminary condemnation order.** (1) ~~The~~ In a condemnation
 24 proceeding, the court has power to may:

25 (a) regulate and determine the place and manner of:

26 (i) making the connections and crossings and enjoying the common uses mentioned in
 27 70-30-103(1)(e); and

28 (ii) ~~of the~~ occupying ~~of~~ canyons, passes, and defiles for railroad purposes, as permitted and
 29 regulated by the laws of this state or of the United States; or

30 (b) subject to 70-30-104(2), limit the interest in real property sought to be ~~appropriated~~ taken if

1 in the opinion of the court the interest sought is not necessary.

2 (2) If the court finds and concludes from the evidence presented that the public interest requires
3 the taking of ~~such an~~ interest in real property and that the ~~plaintiff~~ condemnor has met ~~his~~ the burden of
4 proof under 70-30-111, ~~it must forthwith make and~~ the court shall enter a preliminary condemnation order
5 providing that the condemnation of the interest in real property may proceed in accordance with the
6 provisions of this chapter.

7 (3) (a) If the property sought to be ~~appropriated~~ taken is a sand, stratum, or formation suitable
8 for use as an underground natural gas storage reservoir and the existence and suitability of ~~it~~ the property
9 for ~~such that~~ use has been proved by ~~plaintiff~~ the condemnor based upon substantial evidence, the order
10 of the court ~~shall~~ must direct the condemnation commissioners to ~~ascertain and~~ determine the amount to
11 be paid by the ~~plaintiff~~ condemnor to each person for ~~his~~ each person's interest in the property sought to
12 be ~~appropriated~~ taken for use as ~~such an~~ underground natural gas storage reservoir ~~and/or as~~.

13 (b) In addition to or in lieu of the amount paid under subsection (3)(a), the court may direct the
14 commissioners to determine the annual rental for:

15 (i) the use of ~~such the~~ underground natural gas storage reservoir;

16 (ii) ~~and for~~ the use of so much of the surface as is required in the operation of the ~~underground gas~~
17 ~~storage~~ reservoir and for the use in connection with the creation, operation, and maintenance ~~thereof~~ of
18 the reservoir; and

19 (iii) ~~for all the native gas contained in said the reservoir as compensation and damages by reason~~
20 ~~of the appropriation of such property~~. However, the amount to be paid for ~~such the~~ native gas ~~and all~~
21 ~~thereof shall be no~~ may not be less than the market value of ~~such the~~ gas.

22 (4) The court shall appoint three persons, qualified and recommended as experts ~~and~~
23 ~~recommended as such~~ by the board of oil and gas conservation, to assist and advise the commissioners
24 in determining the compensation and damages to be paid by ~~plaintiff~~ the condemnor to each person for
25 ~~his~~ each person's interest in the property sought to be ~~appropriated, taken, and the~~ The fees and expenses
26 of ~~such persons shall be~~ the experts are chargeable as costs of the proceedings to be paid by the ~~plaintiff~~
27 condemnor.

28 ~~(4)(5)~~ After a complaint as described in 70-30-203 is filed and prior to the issuance of the
29 preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without
30 prejudicing any party's position, with all aspects of the preliminary condemnation proceeding, including

1 discovery and trial. The court shall give ~~such~~ the proceedings expeditious and priority consideration. The
2 preliminary condemnation proceeding ~~shall~~ must be tried by the court sitting without a jury."

3

4 NEW SECTION. SECTION 4. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT RIGHTS AND DUTIES THAT
5 MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS
6 ACT].

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8 NEW SECTION. SECTION 5. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

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